

Jonathan M. Genish (State Bar No. 259031)  
jgenish@blackstonepc.com  
Miriam L. Schimmel (State Bar No. 185089)  
mschimmel@blackstonepc.com  
Joana Fang (State Bar No. 309623)  
jfang@blackstonepc.com  
Alexandra Rose (State Bar No. 329407)  
arose@blackstonepc.com  
Jared C. Osborne (State Bar No. 335968)  
josborne@blackstonepc.com  
**BLACKSTONE LAW, APC**  
8383 Wilshire Boulevard, Suite 745  
Beverly Hills, California 90211  
Tel: (310) 622-4278 / Fax: (855) 786-6356

Attorneys for Plaintiff Alfonso Herrera

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE**

ALFONSO HERRERA, individually, and on behalf of other similarly situated employees and aggrieved employees pursuant to the California Private Attorneys General Act,

Plaintiff,

vs.

W.L. BUTLER CONSTRUCTION, INC., a California corporation; ALL AMERICAN EQUIPMENT RENTAL, LLC, a California Limited Liability Company; and DOES 1 through 25, inclusive,

Defendants.

Case No.: 30-2023-01335445-CU-OE-CXC

Honorable Randall J. Sherman  
Department CX105

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS  
ACTION AND PAGA SETTLEMENT**

Reservation No.: 74389516  
Date: January 3, 2025  
Time: 10:00 a.m.  
Dept.: CX105

Complaint Filed: July 5, 2023  
FAC Filed: July 11, 2024  
Trial Date: Not Set

1 **[PROPOSED] ORDER**

2 On January 3, 2025, at 10:00 a.m. in Department CX105 of the above-captioned Court  
3 located at Civil Complex Center, 751 W. Santa Ana Boulevard, Santa Ana, California 92701,  
4 Plaintiff Alfonso Herrera’s (“Plaintiff”) Motion for Preliminary Approval of Class Action and  
5 PAGA Settlement, came on for hearing before the Honorable Randall J. Sherman. Blackstone Law,  
6 APC appeared on behalf of Plaintiff and Newmeyer & Dillion LLP appeared on behalf of  
7 Defendants W.L. Butler Construction, Inc. and All American Equipment Rental, LLC (together,  
8 “Defendants”).

9 The Court, having carefully considered the papers, argument of counsel, and all matters  
10 presented to the Court, and good cause appearing, hereby **GRANTS** Plaintiff’s Motion for  
11 Preliminary Approval of Class Action and PAGA Settlement.

12 **IT IS HEREBY ORDERED THAT:**

13 1. The Court preliminarily approves the Joint Stipulation of Class Action and PAGA  
14 Settlement (“Settlement” or “Settlement Agreement”) attached as Exhibit 2 to the Declaration of  
15 Jonathan M. Genish in Support of Plaintiff’s Motion for Preliminary Approval of Class Action and  
16 PAGA Settlement. This is based on the Court’s determination that the Settlement falls within the  
17 range of possible approval as fair, adequate, and reasonable.

18 2. This Order incorporates by reference the definitions in the Settlement Agreement, and  
19 all capitalized terms defined therein shall have the same meaning in this Order as set forth in the  
20 Settlement Agreement.

21 3. It appears to the Court on a preliminary basis that the Settlement is fair, adequate, and  
22 reasonable. It appears to the Court that extensive investigation and research have been conducted  
23 such that counsel for the parties at this time are able to reasonably evaluate their respective positions.  
24 It further appears to the Court that the Settlement, at this time, will avoid substantial additional costs  
25 by all parties, as well as avoid the delay and risks that would be presented by the further prosecution  
26 of the case. It further appears that the Settlement has been reached as the result of intensive, serious,  
27 and non-collusive, arms-length negotiations, and was entered into in good faith.

28 4. The Court preliminarily finds that the Settlement, including the allocations for the  
Attorneys’ Fees and Costs, Enhancement Payment, LWDA Payment, Settlement Administration

1 Costs, and payments to the Settlement Class Members and PAGA Employees provided for in the  
2 Settlement Agreement, appear to be within the range of reasonableness of a settlement that could  
3 ultimately be given final approval by this Court. Indeed, the Court has reviewed the monetary  
4 recovery that is being granted as part of the Settlement and preliminarily finds that the monetary  
5 settlement awards made available to the Class Members and PAGA Employees are fair, adequate,  
6 and reasonable when balanced against the probable outcome of further litigation relating to  
7 certification, liability, and damages issues and are consistent with the requirements of California  
8 Labor Code § 2699(1).

9         5. The Court concludes that, for settlement purposes only, the proposed Class meets the  
10 requirements for certification under section 382 of the California Code of Civil Procedure in that: (a)  
11 the Class is ascertainable and so numerous that joinder of all members of the Class is impracticable;  
12 (b) common questions of law and fact predominate, and there is a well-defined community of  
13 interest amongst the members of the Class with respect to the subject matter of the litigation; (c)  
14 Plaintiff's claims are typical of the claims of the members of the Class; (d) Plaintiff will fairly and  
15 adequately protect the interests of the members of the Class; (e) a class action is superior to other  
16 available methods for the efficient adjudication of the controversy; and (f) Class Counsel is qualified  
17 to act as counsel for Plaintiff in his individual capacity and as the representative of the Class.

18         6. The Court conditionally certifies, for settlement purposes only, the Class, defined as  
19 follows:

20             All current and former non-exempt employees who worked for Defendants in the  
21 State of California at any time during the Class Period, but excluding all  
employees who signed a general release agreement with Defendants.

22             (The Class Period is defined as the period from July 5, 2019 through April 24,  
23 2024)

24         7. The Court provisionally appoints Jonathan M. Genish, Miriam L. Schimmel, Joana  
25 Fang, Alexandra Rose, and Jared C. Osborne of Blackstone Law, APC as counsel for the Class  
26 ("Class Counsel").

27         8. The Court provisionally appoints Plaintiff Alfonso Herrera as the representative of  
28 the Class ("Class Representative").

9. The Court provisionally appoints Apex Class Action LLC to handle the

1 administration of the Settlement (“Settlement Administrator”).

2 ///

3 10. Within fourteen (14) calendar days after entry of this Order, Defendants will provide  
4 the Settlement Administrator with the following information about each Class Member: full name,  
5 last known mailing address, Social Security number, dates worked for Defendants during the Class  
6 Period, and such other information as is necessary for the Settlement Administrator to calculate  
7 Workweeks and PAGA Workweeks (if applicable) (collectively referred to as the “Class List”) in  
8 conformity with the Settlement Agreement.

9 11. The Court approves, both as to form and content, the Notice of Class Action  
10 Settlement (“Class Notice”) and Request for Exclusion Form (“Exclusion Form”) attached hereto as  
11 **Exhibit 1** and **Exhibit 2**, respectively, SUBJECT TO counsel fixing the following typos before  
12 sending out the class notice: On p. 6 of the class notice, in §V on line 1, change “Department CX05”  
13 to “Department CX105” and at the bottom of the Request for Exclusion Form, on the line before the  
14 space for the Social Security number, change “identify” to “identity”. The Class Notice and  
15 Exclusion Form (together, the “Notice Packet”) shall be provided to Class Members in the manner  
16 set forth in the Settlement Agreement. The Court finds that the Notice Packet appears to fully and  
17 accurately inform the Class Members of all material elements of the Settlement, of Class Members’  
18 right to be excluded from the Class Settlement by submitting a Request for Exclusion, of Class  
19 Members’ right to dispute the Workweeks and/or PAGA Workweeks credited to each of them by  
20 submitting a Workweeks Dispute, and of each Settlement Class Member’s right and opportunity to  
21 object to the Class Settlement by submitting a Notice of Objection to the Settlement Administrator.  
22 The Court further finds that distribution of the Notice Packet substantially in the manner and form  
23 set forth in the Settlement Agreement and this Order, and that all other dates set forth in the  
24 Settlement Agreement and this Order, meet the requirements of due process and shall constitute due  
25 and sufficient notice to all persons entitled thereto. The Court further orders the Settlement  
26 Administrator to mail the Notice Packet in English and Spanish by First-Class U.S. Mail to all Class  
27 Members within seven (7) calendar days of receipt of the Class List, pursuant to the terms set forth  
28 in the Settlement Agreement.

1           12.     The Court hereby preliminarily approves the proposed procedure, set forth in the  
2 Settlement Agreement, for seeking exclusion from the Class Settlement. Any Class Member may  
3 choose to be excluded from the Class Settlement by submitting an Exclusion Form or a letter  
4 indicating a request to be excluded from the Class Settlement (both of which are referred to as a  
5 “Request for Exclusion”) in conformity with the requirements set forth in the Class Notice, to the  
6 Settlement Administrator, by mail, postmarked on or before the date that is forty-five (45) calendar  
7 days from the initial mailing of the Notice Packet by the Settlement Administrator to Class Members  
8 (“Response Deadline”), or, in the case of a re-mailed Notice Packet, the Response Deadline shall be  
9 extended fifteen (15) calendar days from the original Response Deadline. Any such person who  
10 timely and validly chooses to opt out of, and be excluded from, the Class Settlement will not be  
11 entitled to any recovery under the Class Settlement and will not be bound by the Class Settlement or  
12 have any right to object, appeal, or comment thereon. Nevertheless, all PAGA Employees will be  
13 bound to the PAGA Settlement and will be issued their Individual PAGA Payment, irrespective of  
14 whether they submit a Request for Exclusion. Class Members who do not submit a timely and valid  
15 Request for Exclusion (i.e., Settlement Class Members) shall be bound by the Settlement Agreement  
16 and any final judgment based thereon.

17           13.     A Final Approval Hearing shall be held before this Court on May 9, 2025 at 10:00  
18 a.m. in Department CX105 of the Orange County Superior Court, located at Civil Complex Center,  
19 751 W. Santa Ana Boulevard, Santa Ana, California 92701, to determine all necessary matters  
20 concerning the Settlement, including: whether the proposed settlement of the action on the terms and  
21 conditions provided for in the Settlement is fair, adequate, and reasonable and should be finally  
22 approved by the Court; whether a judgment, as provided in the Settlement, should be entered herein;  
23 whether the plan of allocation contained in the Settlement should be approved as fair, adequate, and  
24 reasonable to the Class Members and PAGA Employees; and determine whether to approve the  
25 requests for the Attorneys’ Fees and Costs, Enhancement Payment, Settlement Administration Costs,  
26 and allocation for the PAGA Amount.

27           14.     Class Counsel shall file a motion for final approval of the Settlement and for  
28 Attorneys’ Fees and Costs, Enhancement Payment, and Settlement Administration Costs, along with

1 the appropriate declarations and supporting evidence, including the Settlement Administrator's  
2 declaration, by April 23, 2025, to be heard at the Final Approval Hearing, and serve the motion in  
3 compliance with CCP notice of motion requirements.

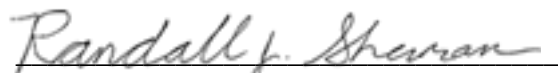
4 15. To object to the Class Settlement, a Settlement Class Member may ~~must~~ submit a  
5 written objection ("Notice of Objection") to the Settlement Administrator, by mail, postmarked on or  
6 before the Response Deadline. The Notice of Objection must be signed and must contain the  
7 information that is required, as set forth in the Class Notice, including and not limited to the grounds  
8 for the objection. Settlement Class Members, individually or through counsel, may also present their  
9 objection orally at the Final Approval Hearing, regardless of whether they have submitted a Notice  
10 of Objection.

11 16. In the event the Settlement does not become effective in accordance with the terms of  
12 the Settlement Agreement, or the Settlement is not finally approved, or is terminated, canceled, or  
13 fails to become effective for any reason, this Order shall be rendered null and void, shall be vacated,  
14 and the parties shall revert back to their respective positions as of before entering into the Settlement  
15 Agreement. The fact that the Court certified the Class for settlement purposes shall not be  
16 admissible or have any bearing on the issue of whether any class should be certified in a non-  
17 settlement context.

18 17. The Court reserves the right to adjourn or continue the date of the Final Approval  
19 Hearing and any dates provided for in the Settlement Agreement without further notice to the Class  
20 Members and retains jurisdiction to consider all further applications arising out of or connected with  
21 the Settlement.

22 **IT IS SO ORDERED.**

23 Dated: **January 3, 2025**

24   
The Honorable Randall J. Sherman  
25 Judge of the Superior Court  
26  
27  
28

# **EXHIBIT 1**

**NOTICE OF CLASS ACTION SETTLEMENT**

*Alfonso Herrera v. W.L. Butler Construction, Inc., et al.*

**Superior Court of California for the County of Orange, Case No. 30-2023-01335445-CU-OE-CXC**

**PLEASE READ THIS CLASS NOTICE CAREFULLY.**

**You have received this Class Notice because Defendants’ records indicate that you may be eligible to take part in the class action settlement reached in the above-referenced case.**

**You do not need to take any action to receive a settlement payment.**

**This Class Notice is designed to advise you of your rights and options with respect to the settlement, and how you can request to be excluded from the Class Settlement, object to the Class Settlement, and/or dispute the number of Workweeks and/or PAGA Workweeks that you are credited with, if you so choose.**

**YOU ARE NOTIFIED THAT:** A class and representative action settlement has been reached between Plaintiff Alfonso Herrera (“Plaintiff”) and Defendants W.L. Butler Construction, Inc. and All American Equipment Rental, LLC (together, “Defendants”) (Plaintiff and Defendants are collectively referred to as the “Parties”) in the case entitled *Alfonso Herrera v. W.L. Butler Construction, Inc., et al.*, Orange County Superior Court, Case No. 30-2023-01335445-CU-OE-CXC (“Action”), which may affect your legal rights. On [date of Preliminary Approval], the Court granted preliminary approval of the settlement and scheduled a hearing on [hearing date] at [hearing time] (“Final Approval Hearing”) to determine whether or not the Court should grant final approval of the settlement.

**I. IMPORTANT DEFINITIONS**

“**Class**” or “**Class Member(s)**” means all current and former non-exempt employees who worked for Defendants in the State of California at any time during the Class Period, but excluding all employees who signed a general release agreement with Defendants.

“**Class Period**” means the period from July 5, 2019 through April 24, 2024.

“**Class Settlement**” means the settlement and resolution of all Released Class Claims.

“**PAGA Employee(s)**” means all current and former non-exempt employees who worked for Defendants in the State of California at any time during the PAGA Period, but excluding all employees who signed a general release agreement with Defendants.

“**PAGA Period**” means the period from July 5, 2022 through April 24, 2024.

“**PAGA Settlement**” means the settlement and resolution of all Released PAGA Claims.

**II. BACKGROUND OF THE ACTION**

On July 5, 2023, Plaintiff commenced a putative class action lawsuit by filing a Class Action Complaint for Damages in the Action. On May 1, 2024, Plaintiff provided written notice to the California Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the California Labor Code that Plaintiff contends were violated (“PAGA Letter”). On [redacted], Plaintiff filed a First Amended Class and Representative Action Complaint (“Operative Complaint”), adding a cause of action under the Private Attorneys General Act of 2004 pursuant to California Labor Code Section 2698, *et seq.* (“PAGA”).

Plaintiff contends that Defendants failed to properly pay minimum and overtime wages, provide compliant meal and rest breaks and associated premiums, timely pay wages upon termination of employment, provide accurate wage statements, and reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of the California Business and Professions Code section 17200, *et seq.*, and conduct that gives rise to penalties under PAGA. Plaintiff seeks, among other things, recovery of unpaid wages and meal and rest period premiums, unreimbursed business expenses, restitution, penalties, interest, and attorneys’ fees and costs.



Defendants deny all of the allegations in the Action or that they violated any law.

The Parties participated in mediation with a respected class action mediator, and as a result, the Parties reached a settlement. The Parties have since entered into a Joint Stipulation of Class Action and PAGA Settlement (“Settlement” or “Settlement Agreement”).

On [Date of Preliminary Approval], the Court entered an order preliminarily approving the Settlement. The Court has appointed Apex Class Action LLC as the administrator of the Settlement (“Settlement Administrator”), Plaintiff Alfonso Herrera as representative of the Class (“Class Representative”), and the following Plaintiff’s attorneys as counsel for the Class (“Class Counsel”):

Jonathan M. Genish  
Miriam L. Schimmel  
Joana Fang  
Alexandra Rose  
Jared C. Osborne  
**Blackstone Law, APC**  
8383 Wilshire Boulevard, Suite 745  
Beverly Hills, California 90211  
Tel: (310) 622-4278 / Fax: (855) 786-6356

If you are a Class Member, you need not take any action to receive an Individual Settlement Payment, but you have the opportunity to request exclusion from the Class Settlement (in which case you will not receive an Individual Settlement Payment), object to the Class Settlement, and/or dispute the Workweeks and/or PAGA Workweeks credited to you, if you so choose, as explained more fully in Sections III and IV below. If you are a PAGA Employee, you do not need to take any action to receive an Individual PAGA Payment; you will not have the opportunity to object or seek exclusion from the PAGA Settlement and all PAGA Employees will be bound to the PAGA Settlement if the Court grants final approval of the Settlement.

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendants that the claims in the Action have merit or that Defendants have any liability to Plaintiff, Class Members, or PAGA Employees. Plaintiff and Defendants, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the Settlement is fair, reasonable, and adequate, and is in the best interests of the Class Members, the State of California, and PAGA Employees.

### **III. SUMMARY OF THE PROPOSED SETTLEMENT**

#### **A. Settlement Formula**

The total gross settlement amount is One Million Four Hundred Seventy-Five Thousand Dollars and Zero Cents (\$1,475,000.00) (the “Gross Settlement Amount”). The portion of the Gross Settlement Amount that is available for payment to Class Members is referred to as the “Net Settlement Amount.” The Net Settlement Amount will be the Gross Settlement Amount less the following payments which are subject to approval by the Court: (1) attorneys’ fees, in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$516,250.00 if the Gross Settlement Amount is \$1,475,000.00), and reimbursement of litigation costs and expenses, in an amount not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00) to Class Counsel; (2) Enhancement Payment in an amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff for his services in the Action; (3) the amount of Fifty Thousand Dollars and Zero Cents (\$50,000.00) allocated toward civil penalties under the Private Attorneys General Act (“PAGA Amount”), of which the LWDA will be paid 75% (\$37,500.00) (“LWDA Payment”) and the remaining 25% (\$12,500.00) will be distributed to PAGA Employees (“PAGA Employee Amount”); and (4) Settlement Administration Costs in an amount not to exceed Eight Thousand Dollars and Zero Cents (\$8,000.00) to the Settlement Administrator.

Class Members are eligible to receive payment under the Class Settlement of their *pro rata* share of the Net Settlement Amount (“Individual Settlement Share”) based on the number of weeks each Class Member worked for Defendants as a non-exempt employee in California during the Class Period (“Workweeks”). The Settlement Administrator has divided

1 the Net Settlement Amount by the Workweeks of all Class Members to yield the “Estimated Workweek Value,” and  
2 multiplied

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

each Class Member's individual Workweeks by the Estimated Workweek Value to yield an estimated Individual Settlement Share that each Class Member may be entitled to receive under the Class Settlement (which is listed in Section III.C below). Class Members who do not submit a timely and valid Request for Exclusion ("Settlement Class Members") will be issued their final Individual Settlement Payment.

Each Individual Settlement Share will be allocated as thirty-three and one-third percent (33 1/3%) as wages, which will be reported on an IRS Form W-2, and sixty-six and two-thirds percent (66 2/3%) as penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099 (if applicable). Each Individual Settlement Share will be subject to reduction for the employee's share of payroll taxes and withholdings with respect to the wages portion of the Individual Settlement Shares resulting in a net payment to the Settlement Class Member ("Individual Settlement Payment"). The employers' share of taxes and contributions in connection with the wages portion of Individual Settlement Shares ("Employer Taxes") will be paid by Defendants separately and in addition to the Gross Settlement Amount.

PAGA Employees are eligible to receive payment under the PAGA Settlement of their *pro rata* share of the PAGA Employee Amount ("Individual PAGA Payment") based on the number of weeks each PAGA Employee worked for Defendants as a non-exempt employee in California during the PAGA Period ("PAGA Workweeks"). The Settlement Administrator had divided the PAGA Employee Amount, i.e., 25% of the PAGA Amount, by the PAGA Workweeks of all PAGA Employees to yield the "PAGA Workweek Value," and multiplied each PAGA Employee's individual PAGA Workweeks by the PAGA Workweek Value to yield each PAGA Employee's Individual PAGA Payment.

Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties, will not be subject to taxes or withholdings, and will be reported on IRS Form 1099 (if applicable).

If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Settlement Class Members and Individual PAGA Payments will be mailed to PAGA Employees at the address that is on file with the Settlement Administrator. **If the address to which this Class Notice was mailed is not correct, or if you move after you receive this Class Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure you receive any payment that you may be entitled to under the Settlement.**

#### **B. Your Workweeks and PAGA Workweeks (if applicable) Based on Defendants' Records**

According to Defendants' records:

- **From July 5, 2019 through April 24, 2024 (i.e., the Class Period), you are credited as having worked [REDACTED] Workweeks.**
- **From July 5, 2022 through April 24, 2024 (i.e., the PAGA Period), you are credited as having worked [REDACTED] PAGA Workweeks.**

If you wish to dispute the Workweeks and/or PAGA Workweeks credited to you, you must submit your dispute in writing to the Settlement Administrator ("Workweeks Dispute"). The Workweeks Dispute must: (a) contain the case name and number of the Action (*Herrera v. W.L. Butler Construction, Inc., et al.*, Case No. 30-2023-01335445-CU-OE-CXC); (b) contain your full name, signature, address, telephone number, and the last four (4) digits of your Social Security number; (c) clearly state that you dispute the number of Workweeks and/or PAGA Workweeks credited to you and what you contend is the correct number; and (d) be returned by mail to the Settlement Administrator at the specified address listed in Section IV.B below, postmarked **on or before [Response Deadline]**.

The Settlement Administrator and the Parties will attempt to resolve any Workweeks Dispute, however, the Court will ultimately decide any unresolved Workweeks Dispute.

#### **C. Your Estimated Individual Settlement Share and Individual PAGA Payment (if applicable)**

As explained above, your estimated Individual Settlement Share and Individual PAGA Payment (if applicable) is based on the number of Workweeks and PAGA Workweeks (if applicable) credited to you.

**Under the terms of the Settlement, your Individual Settlement Share is estimated to be \$ [REDACTED].**

**The Individual Settlement Share is subject to reduction for the employee's share of taxes and**

**withholdings with respect to the wages portion of the Individual Settlement Share and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.**

**Under the terms of the Settlement, your Individual PAGA Payment is estimated to be \$ [REDACTED] and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.**

The settlement approval process may take multiple months. Your Individual Settlement Share and Individual PAGA Payment (if applicable) reflected in this Class Notice is only an estimate. Your actual Individual Settlement Payment and Individual PAGA Payment (if applicable) may be higher or lower.

**D. Release of Claims**

Upon the full funding of the Gross Settlement Amount, Plaintiff and all Settlement Class Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims.

Upon the full funding of the Gross Settlement Amount, Plaintiff, the State of California with respect to all PAGA Employees, and all PAGA Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released PAGA Claims.

“Released Class Claims” means any and all claims which were alleged or which could have been alleged based on the factual allegations in the Operative Complaint, arising during the Class Period, including but not limited to claims for Defendants’ alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages upon termination, provide accurate wage statements, and reimburse necessary business-related expenses in violation of California Labor Code Sections 201, 202, 203, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order(s), and California Business and Professions Code sections 17200, *et seq.*

“Released PAGA Claims” means any and all claims which were alleged or which could have been alleged based on the factual allegations in the Operative Complaint and PAGA Letter, arising during the PAGA Period, for civil penalties under the Private Attorneys General Act of 2004, California Labor Code Sections 2698 *et seq.*, for Defendants’ alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages upon termination, provide accurate wage statements, and reimburse necessary business-related expenses in violation of California Labor Code Sections 201, 202, 203, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order(s).

“Released Parties” Defendants, W.L. Butler, Inc., and any related entities, and their directors, officers, members, and investors.

**E. Attorneys’ Fees and Costs to Class Counsel**

Class Counsel will seek attorneys’ fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$516,250.00 if the Gross Settlement Amount is \$1,475,000.00) and reimbursement of litigation costs and expenses in an amount not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00) (collectively, “Attorneys’ Fees and Costs”), subject to approval by the Court. The Attorneys’ Fees and Costs granted by the Court will be paid from the Gross Settlement Amount. Class Counsel has been prosecuting the Action on behalf of Plaintiff, Class Members, and PAGA Employees on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.

**F. Enhancement Payment to Plaintiff**

Plaintiff will seek the amount of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) (“Enhancement Payment”), in recognition of his services in connection with the Action. The Enhancement Payment will be paid from the Gross Settlement Amount, subject to approval by the Court, and if awarded, it will be paid to Plaintiff in addition to his Individual Settlement Payment and/or Individual PAGA Payment that he may be eligible to receive under the Settlement.

**G. Settlement Administration Costs to Settlement Administrator**

Payment to the Settlement Administrator is estimated not to exceed Eight Thousand Dollars and Zero Cents (\$8,000.00) (“Settlement Administration Costs”) for the costs of the notice and settlement administration process, including and not limited to, the expense of notifying the Class Members of the Settlement, processing Requests for Exclusion, Notices of Objection, and Workweeks Disputes, calculating Individual Settlement Shares, Individual Settlement Payments, and Individual PAGA Payments, and distributing payments and tax forms under the Settlement, and shall be paid from the Gross Settlement Amount, subject to approval by the Court.

**IV. WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER?**

**A. Participate in the Settlement**

**If you want to participate in the Class Settlement and receive money from the Class Settlement, you do not have to do anything.** You will automatically be included in the Class Settlement and issued your Individual Settlement Payment unless you decide to exclude yourself from the Class Settlement.

Unless you elect to exclude yourself from the Class Settlement and if the Court grants final approval of the Settlement, you will be bound by the terms of the Class Settlement and any judgment that may be entered by the Court based thereon, and you will release the Released Class Claims against the Released Parties as described in Section III.D above.

If you are a PAGA Employee and the Court grants final approval of the Settlement, you will automatically be included in the PAGA Settlement and issued your Individual PAGA Payment. This means you will be bound by the terms of the PAGA Settlement and any judgment that may be entered by the Court based thereon, and you will release the Released PAGA Claims against the Released Parties as described in Section III.D above.

As a Class Member and PAGA Employee (if applicable), you will not be separately responsible for the payment of attorney’s fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own attorney’s fees and expenses.

**B. Request Exclusion from the Class Settlement**

Class Members may request to be excluded from the Class Settlement by submitting a letter indicating a request to be excluded from the Class Settlement, as described below, or by completing and submitting the accompanied Request for Exclusion Form (both of which are referred to as a “Request for Exclusion”) to the Settlement Administrator, at the following address:

[Settlement Administrator]  
[Mailing Address]

A Request for Exclusion must: (a) contain the case name and number of the Action (*Herrera v. W.L. Butler Construction, Inc., et al.*, Case No. 30-2023-01335445-CU-OE-CXC); (b) contain your full name, signature, address, telephone number, and last four (4) digits of your Social Security number; (c) clearly state that you do not wish to be included in the Class Settlement; and (d) be returned by mail to the Settlement Administrator at the specified address above, postmarked **on or before [Response Deadline]**.

If the Court grants final approval of the Settlement, any Class Member who submits a timely and valid Request for Exclusion will not be issued an Individual Settlement Payment, will not be bound by the Class Settlement (and the release of Released Class Claims described in Section III.D above), and will not have any right to object to, appeal, or comment on the Class Settlement. Class Members who do not submit a timely and valid Request for Exclusion will be deemed Settlement Class Members and will be bound by all terms of the Class Settlement, including those pertaining to the release of claims described in Section III.D above, as well as any judgment that may be entered by the Court based thereon.

PAGA Employees cannot request exclusion from the PAGA Settlement (and the release of Released PAGA Claims described in Section III.D above) and will still be issued an Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion.

1        **C.     Object to the Class Settlement**

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

You can object to the Class Settlement as long as you have not submitted a Request for Exclusion by submitting a written objection (“Notice of Objection”) to the Settlement Administrator.

The Notice of Objection must: (a) contain the case name and number of the Action (*Herrera v. W.L. Butler Construction, Inc., et al.*, Case No. 30-2023-01335445-CU-OE-CXC); (b) contain your full name, signature, address, telephone number, and the last four (4) digits of your Social Security number; (c) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) contain copies of any papers, briefs, or other documents upon which the objection is based; and (e) be returned by mail to the Settlement Administrator at the specified address listed in Section IV.B above, postmarked **on or before [Response Deadline]**.

The Court will hear from any Settlement Class Member who attends the Final Approval Hearing and asks to speak regarding their objection, regardless of whether they have submitted a written Notice of Objection.

## **V. FINAL APPROVAL HEARING**

The Court will hold a Final Approval Hearing in Department CX05 of the Orange County Superior Court, located at Civil Complex Center, 751 W. Santa Ana Blvd., Santa Ana, CA 92701, on **[date]**, at **[time]**, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve and grant the Attorneys’ Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

The Final Approval Hearing may be continued without further notice to the Class Members and PAGA Employees. It is not necessary for you to appear at the Final Approval Hearing, although you may appear if you wish to.

You can find more information regarding appearing remotely through Zoom online at: <https://www.occourts.org/general-information/covid-19-response/civil-covid-19-response/civil-remote-hearings>.

## **VI. ADDITIONAL INFORMATION**

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement Agreement, you should review the detailed Settlement Agreement and other papers, which are on file with the Court.

You may view the Settlement Agreement and other documents filed in the Action for a fee by using the computer terminals at the Central Justice Center, 700 Civic Center Drive West, Santa Ana, CA 92701. The documents filed in the Action can also be accessed online at the Orange County Superior Court’s website, known as “Public Case Access System,” at the following web address:

<https://civilwebshopping.occourts.org/Login.do>

After navigating to the Orange County Superior Court’s Public Case Assess System website and clicking on ‘Accept Terms,’ enter Case No. ‘01335445’ in the box provided, then enter the year ‘2023’ in the box provided, click on the ‘I’m not a robot’ box, and then click ‘SEARCH.’ Thereafter, you should be able to view documents filed in the case which have been imaged by the Court and information that has been made available by the Court, for free or at a minimal charge.

You may also visit the Settlement Administrator’s website at **[redacted]** for more information and documents relating to the Settlement.

**PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.**

**IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: [INSERT], OR YOU MAY ALSO CONTACT CLASS COUNSEL.**

# **EXHIBIT 2**



**REQUEST FOR EXCLUSION FORM**

*Alfonso Herrera v. W.L. Butler Construction, Inc., et al.*

Superior Court of California for the County of Orange, Case No. 30-2023-01335445-CU-OE-CXC

**USE THIS FORM ONLY IF YOU WISH TO EXCLUDE YOURSELF FROM THE CLASS SETTLEMENT.**

**If you wish to exclude yourself from the Class Settlement**, you must read and sign the following statement and return this form to the Settlement Administrator, by mail, postmarked on or before **[Response Deadline]**, at the following mailing address:

**[Settlement Administrator]**

**[Mailing Address]**

I request to be excluded from the class action settlement in the matter of *Alfonso Herrera v. W.L. Butler Construction, Inc., et al.* By excluding myself from the class action settlement, I understand that I will not be bound by the settlement and release of the Released Class Claims, and I will not receive an Individual Settlement Payment. I understand that, nevertheless, if I am a PAGA Employee, I will still be bound by the settlement and release of the Released PAGA Claims and will be issued an Individual PAGA Payment.

Date: \_\_\_\_\_

Full Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

Signature: \_\_\_\_\_

To ensure that this form is properly processed on your behalf and to avoid confusion in the event that multiple individuals having the same or similar names submit this form, please provide the last 4 digits of your Social Security Number to the administrator so that your identify may be confirmed:

\_\_\_\_\_

**If you do not wish to exclude yourself from the Class Settlement (and you wish to receive payment from the Class Settlement), you should not return this form – you do not need to take any action.**